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THOMAS J. SUGRUE

June 20, 1997

JOEL BERNSTEIN  
DAVID E. COLTON\*  
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\*ADMITTED N.Y. & PA.  
\*\*ADMITTED MD.

**EX PARTE OR LATE FILED**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

**RECEIVED**

**JUN 20 1997**

Re: IB Docket No. 96-220  
Notice of Ex Parte Presentation


Federal Communications Commission  
Office of Secretary

Dear Mr. Caton:

Orbital Communications Corporation ("ORBCOMM") hereby notifies the Commission, pursuant to Section 1.1206 of the Commission's Rules, that it met yesterday afternoon with Mr. David Siddall of Commissioner Ness' office with regard to the above captioned proceeding. Attending the meeting on behalf of the ORBCOMM were myself, Mr. Alan Parker and Mr. R.T. Gregg. We discussed the issues addressed in our June 18, 1997 letter to Chairman Hundt, a copy of which is attached. An original and one copy of this notice are being submitted to the Secretary's Office for inclusion in the record. In addition, copies are being furnished to Mr. Siddall.

If you have any questions with regard to this matter, please direct them to the undersigned counsel for ORBCOMM.

Sincerely,

  
Stephen L. Goodman  
Counsel for ORBCOMM

Attachment

cc: David Siddall

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Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
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Washington, D.C. 20554

Re: IB Docket No. 96-220  
Notice of Ex Parte Presentation

Dear Mr. Caton:

Orbital Communications Corporation ("ORBCOMM") hereby notifies the Commission, pursuant to Section 1.1206 of the Commission's Rules, that it met yesterday afternoon with Mr. Rudy Baca of Commissioner Quello's office with regard to the above captioned proceeding. Attending the meeting on behalf of the ORBCOMM were myself, Mr. Alan Parker and Mr. R.T. Gregg. We discussed the issues addressed in our June 18, 1997 letter to Chairman Hundt, a copy of which is attached. An original and one copy of this notice are being submitted to the Secretary's Office for inclusion in the record. In addition, copies are being furnished to Mr. Baca.

If you have any questions with regard to this matter, please direct them to the undersigned counsel for ORBCOMM.

Sincerely,



Stephen L. Goodman  
Counsel for ORBCOMM

Attachment  
cc: Rudy Baca

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THOMAS J. SUGRUE

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\*ADMITTED N.Y. & PA.  
\*\*ADMITTED MD.

June 18, 1997

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
Room 814  
1919 M Street, N.W.  
Washington, D.C. 20554

JUN 18 4 56 PM '97

Re: IB Docket No. 96-220

Dear Chairman Hundt:

Orbital Communications Corporation ("ORBCOMM") is writing this letter as a follow up to the meeting in your office last Friday. We greatly appreciate the time you took to meet with the Little LEO industry, and wanted to highlight a few of the most important points made during the meeting. In addition, we wanted to make clear our positions on the Staff's proposal put forth at that meeting and to respond to a few specific assertions made by another applicant.

We have been working since the Fall of 1989 to make LEO technology a marketplace reality, and we are well on our way to system deployment. ORBCOMM filed its application and petition for rulemaking in February 1990, and received its license from the Commission in October, 1994. Our first two satellites are in operation providing initial commercial services, and the rest of the constellation will be launched at the end of this year and early next year. We are participating in this current processing round for two limited purposes: (i) ORBCOMM is seeking to move its feeder link uplinks to the Transit Band (149.9-150.05 MHz), because this band was not available when ORBCOMM originally filed its application;<sup>1/</sup> and (ii) ORBCOMM is seeking a small amount of additional spectrum to support the deployment of

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<sup>1/</sup> The Transit Band was allocated globally for LEO satellite systems at WARC-92, and the United States amended its Table of Frequencies to incorporate use of the Transit Band for Little LEO spectrum in February 1993. Based on staff advice, however, ORBCOMM deferred seeking use of that spectrum until the second processing round.

The Honorable Reed E. Hundt

June 18, 1997

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twelve more satellites in its constellation in order to enhance service availability in the Northern latitudes (including Alaska, Canada, Northern Europe and Russia).<sup>27</sup>

As we tried to convey during the meeting, there are several points of disagreement between ORBCOMM and the staff proposal. We are most concerned with the suggestion that the first round licensees would now automatically be expelled from this processing round. ORBCOMM believes that such an exclusion is unlawful, bad policy and unnecessary.

**Automatic Exclusion of the First Round Licensees Would Be Arbitrary and Capricious and also Constitute Unlawful Retroactive Rulemaking**

When ORBCOMM responded to the Public Notice initiating the second processing round, there was no limit on the eligibility of the first round participants. Indeed, the Part 25 Rules with respect to geostationary satellites specifically contemplate making additional capacity available to incumbent operators, going so far as to allow additional orbital positions even to licensees with unconstructed or unlaunched satellites. Such a policy acknowledges the need for satellite licensees to plan their systems many years in advance. Moreover, the Commission affirmatively placed STARSYS and VITA into this processing round, so it would be unfair and unlawful to make the first round licensees ineligible retroactively.

The claimed need to exclude the first round licensees based upon the "public interest" in increasing the number of competitors does not withstand scrutiny. First, the reasonable needs of all of the applicants, including the first round licensees, can be accommodated. This is particularly true in ORBCOMM's case, since we are seeking only a small additional amount of downlink spectrum.<sup>28</sup> Second, significant competition will exist regardless of the number of additional systems licensed in this processing round. ORBCOMM will be competing against GE/STARSYS (a large U.S. licensed Little LEO system), foreign licensed Little LEO systems (including systems licensed by Russia and France), Big LEO systems

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<sup>27</sup> In its license modification request being considered in this proceeding, ORBCOMM originally requested an additional 90 kHz of downlink spectrum. ORBCOMM has subsequently improved the efficiency of its satellite system design, and only requires 70 kHz to support the twelve additional satellites. In addition, these system improvements allow ORBCOMM to reduce its already licensed service link downlink requirements by 40 kHz, so that in essence the additional satellites require only an incremental 30 kHz of spectrum above the amount already licensed to ORBCOMM.

<sup>28</sup> See, n.2, *supra*

(including Iridium, Globalstar, TRW/Odyssey and ICO Global, all of which plan data services), geostationary systems (including Inmarsat and AMSC), and for several services with terrestrial offerings (including CDPD, Narrowband PCS and Cellemetry). Under these conditions, it makes little sense to dismiss at this point the first round licensees, especially without considering the public interest benefits that the small additional spectrum could bring.

Given these significant legal infirmities in the Staff's proposal, Commission adoption of such a plan is likely to be successfully challenged at the Court of Appeals. If that occurs, then the Commission will have to expend significant efforts in revisiting these issues, and more importantly, the deployment of new systems will be delayed while these issues are resolved. Such a course of action would thus be adverse to the public interest, and is avoidable.

**Dismissal of the First Round Licensees from this Processing Round  
Would Disserve the Public Interest in Material Respects**

ORBCOMM also believes that it would directly disserve the public interest to exclude the first round licensees automatically. As ORBCOMM has demonstrated, a small amount of additional downlink spectrum will allow ORBCOMM to improve service availability to Alaska, thereby providing messaging and position-location services in those isolated and remote territories.<sup>4</sup> In addition, by enhancing coverage of Canada, Northern Europe and Russia, expanded export opportunities will be provided to ORBCOMM, with the attendant benefits to the U.S. economy. ORBCOMM's partners in Canada, Europe and Russia have confirmed the demand for ORBCOMM's satellite services in these markets, and the additional twelve satellites can ensure that near real time service is available even in these remote areas.

Moreover, no other applicant can provide service as quickly or cheaply, because ORBCOMM can readily incorporate the additional satellites onto the ongoing production line. The other applicants will take years to deploy similar capabilities, assuming *arguendo* they are successful in raising the necessary capital. These various public interest benefits, obtained at relatively low cost, would be lost or at best significantly delayed under the staff's proposal automatically to dismiss ORBCOMM from this processing round.

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<sup>4</sup> Attached are two charts reflecting the difference in availability between a 36 and 48 satellite ORBCOMM constellation. As those charts reflect, maximum service outages in Alaska and Canada decline from over ten hours to under 5 minutes, and service availability increases from just over 20% to above 30%.

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Finally, the staff proposal appears to be based on the erroneous notion that exclusion of the first round licensees is necessary to allow additional entry. This supposition ignores the fact, as explained above, that (i) new entry will not be precluded by ORBCOMM's modest needs; and (ii) in any event, ORBCOMM and the other first round licensees will be facing competition from a number of sources, including other satellite systems and terrestrial services. Providing ORBCOMM with the opportunity to deploy a more robust satellite system has the added advantage of enabling it to compete more effectively against these other foreign and domestic alternatives, thus allowing consumers to reap the manifold benefits of more robust competition.

**It is Not Necessary to Exclude the First Round Licensees  
in Order to License the New Entrants**

As the "XYZ" alternative demonstrates, the staff's proposal to arbitrarily exclude some of the second round applicants is unnecessary to permit the rapid grant of licenses on a non-mutually exclusive basis. That compromise, agreed to by six of the seven applicants, can accommodate the reasonable needs of all of the pending applicants without needlessly dismissing any of the applications. Although some adjustments or additional demonstrations may be necessary to convince the Department of Defense to permit sharing with more than a single Little LEO system, the Commission should not allow the initial refusal of the Department of Defense to coordinate in good faith to stand as a barrier to the "inclusive" compromise solution. Particularly in light of the availability of better solutions, automatically excluding the first round licensees would be arbitrary and capricious. ORBCOMM therefore urges the Commission to reject the proposal to change the rules now to dismiss the first round licensees from this processing round.

ORBCOMM also believes that the Commission need not adopt new rules if its intent is simply to winnow out the field of applicants. Following the first ever negotiated rulemaking that included eight weeks of concerted effort by all of the interested parties, the Commission in 1994 adopted standards for determining the Little LEO qualifications and incorporated those into the Part 25 Rules. The Commission failed to apply those standards to the applicants in this processing round. As ORBCOMM demonstrated previously, none of the remaining new applicants had provided convincing evidence in the record that it meets the present financial qualifications standard, particularly if the Commission uses the expected actual costs of construction, launch and operation of the initial two satellites of the applicant's constellation as detailed in the applications (including significant non-recurring engineering and other development expenses), rather than the artificially low figures proffered by the applicants. A large amount of up-front costs are necessarily incurred in construction of the satellites, and those costs must be

The Honorable Reed E. Hundt  
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included in the "hurdle" the applicants must show they can meet; the overly simplistic *pro rata* calculations of the applicants ignore these very real costs.<sup>2/</sup>

**The Commission Need Not be Bound by Leo One's  
Claimed Strict Adherence to its Self Serving Business Plan**

ORBCOMM also wants to take this opportunity to address a few remarks made by Leo One at Friday's meeting. ORBCOMM was surprised and confused by counsel for Leo One's statement that no one had disputed their analysis based on the Department of Justice guidelines. ORBCOMM had strongly criticized that analysis in its Reply Comments in this proceeding.<sup>3/</sup> As ORBCOMM demonstrated, the Leo One "analysis": (i) was based on a severely flawed definition of the market; (ii) excluded the foreign licensed systems from its calculations (not to mention the exclusion of Big LEOs and geostationary satellite systems); (iii) was entirely speculative since full Little LEO services are not yet even available; and (iv) was based on a static view of the market that simply equates potential capacity with market share. Thus, Leo One's counsel was wrong -- the record includes well-founded attacks on Leo One's "analysis" under the Department of Justice guidelines.

It is also somewhat ironic that at the meeting Leo One repeated its claim that ORBCOMM is a monopolist. Indeed, in its Comments in this proceeding, Leo One asserts that with respect to several markets (defined by the need for timeliness of transmissions), Leo One will

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<sup>2/</sup> See generally, ORBCOMM Comments on CTA's Application, February 24, 1995, at pp. 3-7; ORBCOMM Comments on E-SAT's Application, February 24, 1995, at pp. 2-3; at ORBCOMM Comments on Final Analysis' Application, February 24, 1995, at pp. 2-4; ORBCOMM Comments on Leo One's Application, November 16, 1994, at pp. 5-9. ORBCOMM observes that Final Analysis had subsequently filed a new financial qualifications demonstration, but none of the other applicants has even attempted to update their showings. In the case of Leo One, ORBCOMM specifically questions whether the David Bayer Trust, the ostensible source of funding for Leo One, has suffered in value because of the decline in value of MobileMedia's stock. As the Commission acknowledged in its order granting MobileMedia a ten month stay of the hearing, MobileMedia's stock has declined from \$27 per share in 1995 to \$.50 per share as of June 3, 1997 (and it has now been delisted from NASDAQ). *MobileMedia Corporation*, FCC 97-197, released June 6, 1997, at ¶ 16.

<sup>3/</sup> See generally, ORBCOMM Reply Comments, filed January 13, 1997, at pp. 10-18

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be the only company capable of providing service.<sup>7</sup> Leo One, however, apparently believes that it will be a "benevolent monopolist," asserting that it will use its profits from the services where it will be the only provider to fight off ORBCOMM's supposed strategic or predatory pricing.<sup>8</sup> The Commission need not resolve this obvious inconsistency in Leo One's position with regard to monopolies, however, because ORBCOMM will offer services to time-sensitive markets and face competition from several sources, notwithstanding Leo One's egregious and erroneous assertions to the contrary. The Commission should not, however, adopt a licensing plan which has been designed to confer unique advantages on Leo One, since under Leo One's proposal, only Leo One would be able to deploy 48 satellites.<sup>9</sup>

Finally, ORBCOMM reiterates its claim that the Commission should not permit itself to be held captive to Leo One's "business plan" in resolving the potential mutual exclusivity. All of the other second round applicants have offered to make reductions in their spectrum needs in order to support a compromise that can accommodate the reasonable needs of the second round applicants.<sup>10</sup> Leo One, in contrast, insists on the sanctity of its business plan, although Leo One has variously described its services as providing "real time," "near real time," "100% availability," and "near 100% availability," thus leading to some confusion over precisely what that plan incorporates. Moreover, as the Commission recognizes in the award of orbital positions to geostationary satellites, the Commission is not bound by an applicant's request for a particular slot, and the slots are treated as fungible notwithstanding their differences in such factors as full-CONUS coverage (which presumably affects an applicant's business plan). The Commission should resolve the issues in this proceeding on the basis of the public interest, not on the basis of a "business plan" concocted by a new company whose owner has experience limited to running

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<sup>7</sup> See e.g., Leo One Comments filed December 20, 1996 at Boulton Appendix A p. 19.

<sup>8</sup> *Id.* Leo One even claims that the public interest will be advanced by its holding such a monopoly.

<sup>9</sup> This assumes, of course, that Leo One is found to be qualified to become a licensee after a hearing is held on the extent of Leo One's owner's involvement in the MobileMedia wrongdoing. ORBCOMM understands that a number of the pending applicants are jointly filing a letter addressing the impact of the MobileMedia investigation on this processing round.

<sup>10</sup> As a result of improved efficiency, ORBCOMM has been able to reduce its downlink needs so that it is seeking only 30 kHz of downlink spectrum above its licensed bandwidth. In addition, with respect to its request for use of the Transit band for a gateway uplink, ORBCOMM is willing to assume the risk that the United States will be successful at WRC-97 in obtaining additional feeder link spectrum allocations.

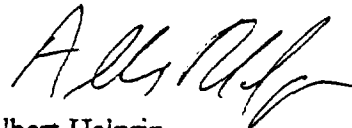


The Honorable Reed E. Hundt  
June 18, 1997  
Page 7

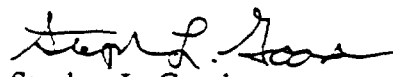
terrestrial paging and cellular services. This concern is even more pressing in a case such as this where the qualifications of the applicant attempting to persuade the Commission to adopt a licensing plan that excludes most of the other applicants are so open to question.<sup>11</sup>

In sum, ORBCOMM believes that the staff proposal is significantly flawed, and its arbitrary disqualification of the first round licensees is patently unlawful and does not serve the public interest. ORBCOMM also believes that the Commission is not bound by Leo One's business plan. ORBCOMM thus urges the Commission to reject the Staff's proposal, and instead to adopt an "inclusive" compromise solution that will allow all of the applicants to be licensed. Adoption of an "inclusive" solution will also eliminate the prospect of lengthy delays resulting from legal challenges and the high likelihood of subsequently having to redesign the Staff's proposal.

Sincerely,



Albert Halprin



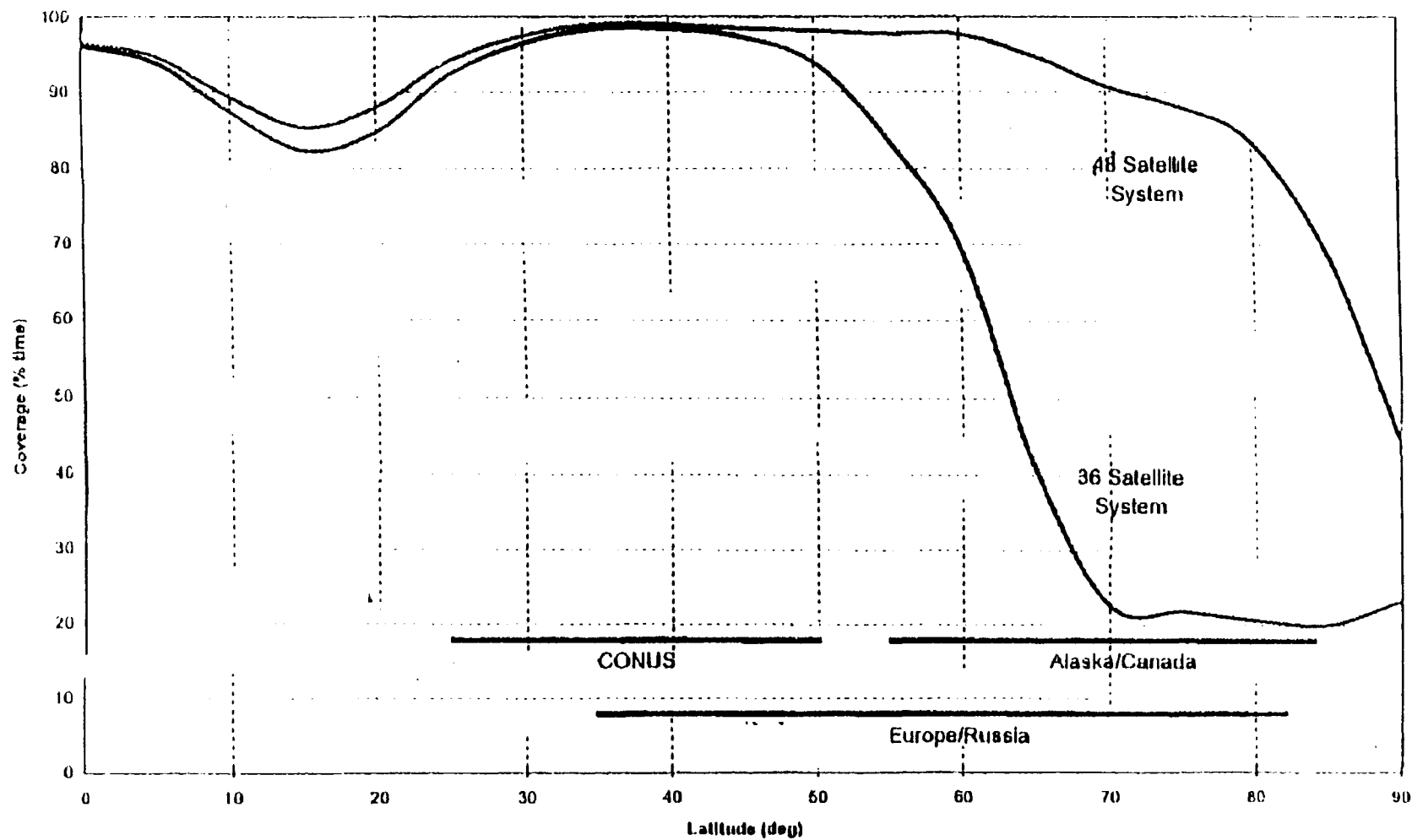
Stephen L. Goodman  
Counsel for ORBCOMM

cc: Commissioner Quello  
Commissioner Ness  
Commissioner Chong  
Parties of Record

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<sup>11</sup> ORBCOMM observes that (i) with respect to the cellular experience, the FCC previously issued \$505,000 in forfeitures against Mr. Bayer for technical violations of the Commission's Rules by his cellular operations (*David A. Bayer*, 7 FCC Rcd 5054, 5057 (1992)), and (ii) with respect the paging experience, the Commission is well aware of the financial troubles and regulatory irregularities of MobileMedia (*MobileMedia Corporation*, FCC 97-197, released June 6, 1997).

**Addition of 12 Satellites to ORBCOMM System Increases  
Service Availability In Alaska and Canada to Near Real-Time**  
Percent of Time a Satellite Is In View (5 deg Elevation Mask)



**Addition of 12 Satellites to ORBCOMM System Supports  
Emergency Communications Throughout Alaska and Canada  
Maximum Duration of Service Outages**

